

# **2008 Columbia Basin Fish Accords**

**Memorandum of Agreement (MOA) between Colville  
Tribes and the FCRPS Action Agencies**

**March 3, 2009  
Presentation**

# **Memorandum of Agreement (MOA) signed May 2, 2008, between Confederated Tribes of the Colville Reservation (Colville Tribes) and the “Action Agencies”:**

- Bonneville Power Administration (BPA)
- U.S. Army Corps of Engineers (Corps)
- U.S. Bureau of Reclamation (Reclamation)

MOA is in effect for 10 years from May 2, 2008, to September 18, 2018.

## Purpose of MOA:

- Action agencies to provide “**long-term commitments** for funding and implementation activities” for the “**protection and recovery of salmon and steelhead** listed under the Endangered Species Act”
- Action agencies recognize the **Colville Tribes** “as a governmental partner” in **protection and recovery of Upper Columbia listed ESUs**
- MOA to **resolve** a “broad range of **issues** associated with tribal claims and concerns” directly and indirectly **related to effects on fish and wildlife** resources of “construction, inundation, operation and maintenance of” **Federal Columbia River Power System and Upper Snake River Projects**

# MOA establishes Colville Tribes' rights and interests and the authority and responsibilities of the Corps and Reclamation.

## Agreement principles include:

- Mitigation of effects of FCRPS/Upper Snake Projects are based on **biologically and economically sound operations of hydroelectric system**
- Action Agencies will **consider interests of tribes and sovereign states** in making **operational decisions**
- Measures aimed at **survival and protection of ESA-listed salmon & steelhead should not adversely impact non-listed species**; adverse impacts must be minimized if unavoidable
- Non-operational mitigation should **consider the 4 "Hs"**
- Mitigation **funding and operational priorities based on biological needs and limiting factors**
- **No new administrative procedures or forums** established by MOA
- Action Agencies have a **trust responsibility to Colville Tribes**

Action Agencies commit to providing funding and implementation for actions and resource objectives important to the Colville Tribes. ESA-listed salmon and steelhead, non-listed anadromous fish, resident fish, and wildlife are included.

ESA actions cover hydroelectric operations, habitat, hatchery, and harvest as well as research, monitoring, and evaluation. The Action Agencies and the Colville Tribes will work with the Northwest Power and Conservation Council; new hatchery projects are subject to ISRP and NPCC review.

## ESA Actions: Hydro Operations

- Colville Tribes agree to concur with the hydro performance standards, targets, and metrics
- Adaptive management approach will be used by Colville Tribes and Action Agencies
- A comprehensive Research, Monitoring, and Evaluation program will be provided for the ESU populations important to the Colville Tribes
- Colville Tribes agree that spill and fish transfer measures contained in the BiOp are acceptable for term of MOA
- Action Agencies and Colville Tribes agree to specific flow measures for summer and dry years
- Action Agencies will take action to aid fish which are *not* ESA-listed in the case of equipment failures or other detrimental conditions; ESA-listed fish to take priority

## ESA Actions: Habitat

- BPA to provide funding for selected ESA-focused habitat projects linked to biological benefits based on limiting factors
  
- Priority will be given to projects that:
  - address water temperatures, instream flows, access to historical habitats, and recovery of riparian habitat
  - are consistent with recovery plans and Colville Tribes' reserved rights
  - provide benefits based on factors limiting fish populations
  
- Bureau of Reclamation to provide funding for pre-determined amount of leased water to assist with restoration of instream flow to lower Salmon Creek to benefit UCR steelhead

# ESA Actions: Hatchery and Harvest

- BPA will make funds available for new facility construction and/or expansion of existing facilities in keeping with the terms of the MOA
- Corps will discuss with Colville Tribes any modifications to production practices in hatchery mitigation program for John Day and The Dalles projects
- Corps will support planning, design, and construction of Chief Joseph Hatchery
- All parties agree to:
  - Minimize risk to ESA-listed fish
  - Support recovery trends for natural-origin fish
  - Obtain all regulatory reviews and clearances
  - Support Colville Tribes' reserved fishing rights
- BPA's funding will not replace funding for hatcheries funded by other entities
- If a hatchery action cannot be implemented, funding will not be shifted to non-hatchery actions

## ESA Actions: Research, Monitoring, and Evaluation

- BPA to provide funding for specified research, monitoring, and evaluation projects linked to biological benefits based on limiting factors for fish and wildlife.

### Non-ESA Actions

- BPA to provide expense and capital funding for projects involving anadromous fish, resident fish, and wildlife
- Corps to pursue “in-lieu” fishing sites within the Colville Reservation; actions could include land acquisition, boat ramps, cleaning stations, restrooms, scaffold sites, and central Tribal cooler/freezer storage space

MOA covers replacement projects and adaptive management; if a non-hatchery project is not implemented due to certain factors, another similar project will be negotiated.

MOA established BPA commitments regarding inflation, ramp up, planning vs. actual expenditures, and carry-over.

# Forbearance, Withdrawal, Dispute Resolution, and Other Provisions

Forbearance: The Colville Tribes recognize that the MOA represents a long-term commitment by the Action Agencies to fund and implement activities that will support protection and recovery of EAS-listed fish as well as other fish and wildlife in the UCR area. **The Colville Tribes agree not to initiate, join, or support any ESA, Northwest Power Act, Clean Water Act or Administrative Procedure Act suits against the Action Agencies or NOAA** regarding:

- the legal sufficiency of FCRPS Proposed Action, FCRPS BiOp, Upper Snake BiOp, or other applicable Records of Decision
- the effects on fish resources and water quality resulting from operation of FCRPS and Upper Snake Projects. Water quality includes, but is not limited to, temperature and dissolved oxygen for anadromous fish. It does not include Clean Water Act regulatory activities, e.g. Corps 404 program.

Adequacy: **The Colville Tribes agree that, if the Action Agencies fulfill their MOA commitments, the provisions of the MOA and the draft FCRPS and Upper Snake BiOps are adequate for meeting fish and wildlife obligations under ESA, NW Power Act, Clean Water Act, and other pertinent laws.**

**The Tribes agree to refrain from taking positions in administrative or judicial forums or support any entity that takes positions which are inconsistent with the adequacy affirmation.**

MOA does not address or resolve Tribes' requests relating to BPA funding of assessments for operations losses to wildlife from FCRPS Projects.

**The Tribes agree that they will not advocate or support FCRPS dam breaching during the life of the MOA.**

## Ongoing and/or Expanded ESA Projects

- Omak Fish Passage: address sources of fine sediment and improve fish passage for UCR steelhead and spring Chinook (\$2.8 million)
- Salmon Creek Project: provide fish passage from mouth of Salmon Creek to upstream of Okanogan Irrigation District's diversion dam (\$4.2 million)
- Okanogan River Water Acquisition: funds water rights transactions within Okanogan River Subbasin to restore streamflows and riparian easements of critical fish-bearing tributaries (No funds currently allocated)

## Ongoing and/or Expanded ESA Projects, continued

- Chief Joseph Hatchery: increase abundance, productivity, distribution and diversity of naturally spawning populations of UCR summer/fall Chinook salmon in Okanogan and Columbia Rivers above Wells Dam and re-introduce extirpated spring Chinook to historical habitats in Okanogan Subbasin (\$19.2 million for operations and \$41 million in capital funds)
- Selective Harvest Gear Evaluation: evaluate live-capture, selective fishing gears to harvest non-ESA listed species while protecting ESA-listed UCR steelhead and spring Chinook salmon (\$1 million)
- Okanogan Basin Monitoring and Evaluation: monitor and evaluate important biological, water quality, and physical habitat indicators for anadromous fish throughout the Okanogan Subbasin to establish long-term status and trend data and determine effects of habitat restoration efforts

## New ESA Projects

- Implement Upper Columbia Spring Chinook and Steelhead Recovery Plan: implement habitat-related projects defined by the Okanogan Initiative Plan
- Okanogan Habitat: indentify and prioritize land and water acquisitions within the Okanogan Subbasin, targeting habitat enhancement and protection opportunities (\$24 million)
- Land and Water Acquisitions: implement land and water acquisitions to enhance ESA-listed species (\$15 million)
- Develop Locally Adapted Okanogan Steelhead Broodstock and Recondition Steelhead Kelts: augment production of wild steelhead by increasing capabilities to collect local, naturally producing adult steelhead and rearing F1 progeny at Cassimer Bar Hatchery; recondition kelts (\$3.1 million for operations and \$1 million in capital)

## New ESA Projects, continued

- Selective Gear Deployment: following the selective fishing gear study, deploy selective fishing gear within waters containing ESA-listed species (\$2.8 million)
- ESA Fish and Wildlife Law Enforcement: enhance existing Tribal law enforcement program to include protection of endangered steelhead and Chinook salmon as well as resident fish in the Upper Columbia River (\$1.3 million)
- FCRPS Water Management Studies: evaluate and analyze alternative FCRPS water management activities including dry year operations and forecasting and provide input on Treaty and non-Treaty water use options to address impacts to UCR listed ESUs (\$925,000)
- Adult Salmon and Steelhead Passage Investigations: validate adult survival assumptions used for estimating UCR steelhead and spring Chinook survival from Bonneville to McNary dams (\$275,000)

## Non-ESA, Ongoing Projects

- Chief Joseph Kokanee Enhancement: restore natural kokanee production in Sanpoil and Barnaby creeks and increase production in lower Nespelem River to provide increased harvest and recreational opportunities (\$4.5 million for operations and \$1.2 million for capital improvements)
- Lake Roosevelt Rainbow Habitat/Passage Improvement: improve habitat and fish passage in the Sanpoil Subbasin by various means to increase natural production and provide for increased harvest and recreation opportunities; monitor results on habitat and passage improvements (\$7.9 million)
- Colville Hatchery: re-establish populations of native redband trout and convert populations from non-native coastal rainbow trout in Colville Reservation tributaries (\$13.1 million)
- Various Wildlife Land Acquisitions: purchasing land and acquiring management rights to add to the mitigation base for hydropower impacts, especially those related to construction and operation of Chief Joseph and Grand Coulee dams (funding not finalized)

## Non-ESA, New Projects

- Resident Fish Research, Monitoring, and Evaluation: maintenance, monitoring, and research on the effects of land acquisitions, fencing, and fish passage structures (\$2 million)
- Bridge Creek Water Rights Transfer: exchange in water rights to allow greater instream flow in the Sanpoil River to increase survival of rainbow trout and improve spawning habitat for kokanee (\$150,000)
- Twin Lakes Enhancement: inject oxygen into upper levels of water in lakes to counteract eutrophication and increase survival of stocked trout (\$1.4 million)
- Resident Fish Loss Assessment: provide assessment of resident fish habitat losses due to inundation from Federal hydropower facilities at Chief Joseph and Grand Coulee dams (\$1.5 million)

## Non-ESA, New Projects, continued

- Rufus Woods Harvest Augmentation with Feminized Triploid Rainbow Trout and Creel Census: release feminized triploid trout and monitor the fishery to determine catch rates, optimal number and size of trout released, origin of fish caught and primary factors affecting the quality of the fishery (\$2.6 million)
- Lake Roosevelt Habitat Enhancement Structures: placement of artificial substrates and hiding structures to increase fish survival in shoreline habitats (\$2.9 million)
- Lake Roosevelt Burbot Population Assessment: assess current burbot population status and determine limiting factors in Lake Rufus Woods and Lake Roosevelt (\$1.8 million)
- White Sturgeon Enhancement: assess location and population status of sturgeon; continue Lake Roosevelt Risk Assessment to look at impacts of contaminants (\$2.5 million)

## Non-ESA, New Projects, continued

- Rufus Woods Redband Rainbow Trout Broodstock Net Pens: install net pens in Lake Rufus Woods to raise redband trout broodstock (\$2.2 million)
- Lake Roosevelt Floating Habitat Enhancement Structures: installation of artificial floating spawning and rearing beds to increase egg to juvenile survival (\$2 million)
- Wildlife Mitigation, Hellsgate Project, Operations and Maintenance
- Omak Lake Parcels Acquisition: acquisition of management rights to adjacent or similar lands to mitigate for wildlife losses associated with Grand Coulee and Chief Joseph dams (\$2.5 million)

Total cost of the on-going, expanded, and new projects from 2009 through September 2018 is expected to be **\$158,414,000 for operations and \$45,736,547 for capital improvements.**

**THANK YOU**